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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
YU, GINA C	

ART UNIT	PAPER NUMBER
1611	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/702,438	DE CARVALHO ET AL.	
	Examiner	Art Unit	
	GINA C. YU	1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 November 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *24-49* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *24-49* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 11, 2008 has been entered.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 34-49 rejected under 35 U.S.C. 103(a) as being unpatentable over Bolich et al (6,635,240).

Bolich teaches an aerosol hair styling compositions which comprise (a) from about 5% to about 90% of a water-soluble polyalkylene glycol (polyol) that has a number average molecular weight of from about 190 to about 1500 and from about 5 to about 35 repeating alkylene oxide radicals wherein each of the repeating alkylene oxide radicals has from 2 to 6 carbon atoms; (b) from about 1% to about 90% of a liquid carrier; and (c) from about 5% to about 40% of a propellant. See column 3, lines 20-30. Particularly, Example XV discloses a composition comprising 15% PEG-8 (carbowax 400 with a molecular weight of 400), 0.30% Carbopol (reads on anionic hair fixing

polymer as taught by Bolich on column 6, lines 45-54), 10% propellant, and water, among other components.

Bolich further teaches the concentration of the polyalkylene glycols are generally in a range from about 1% to about 90%, preferably from about 3% to about 75%, more preferably from about 7.5% to about 50%, even more preferably from about 10% to about 25%, by weight of the composition. Specific examples of the preferred polyalkylene glycols include polyethylene/polypropylene glycol copolymers, triglycerin, hexaglycerin, PEG-4, PEG-6, PEG-5, PEG-6, PEG-8, PEG-12, PEG-14, PEG-18, PEG-20, PEG-32, and mixtures thereof. See column 6, lines 20-45 and examples. Note hexaglycerin has a molecular weight of 462.49 and it has three carbons that are continuous and not interrupted by a heteroatom. Thus, hexaglycerin reads on claimed recitation "wherein the polyol comprises a C3-C30 hydrocarbon chain which is not interrupted by a heteroatom." See instant claim 41. Note triglycerol (molecular weight 240.25) also reads on claimed recitation "wherein the polyol comprises a C3-C30 hydrocarbon chain which is not interrupted by a heteroatom."

Bolich teaches additional styling agents to help improve initial hair hold performance in an amount of about 0.25% to about 5%, preferably from about 0.5% to about 4.0%, by weight of the compositions. See column 6, lines 45-55. Bolich teaches the use of polysaccharide styling polymers selected from anionic polysaccharides, cationic polysaccharides, and nonionic polysaccharides. See column 7, lines 1-5 and example XIX-XX. Bolich also discloses the hair styling compositions further comprises a gelling agent to help provide the desired viscosity and it also helps to provide for

improved hair hold in an amount from about 0.1% to about 10%, preferably from about 0.2% to about 5.0%, by weight of the compositions. Bolich teaches the preferred crosslinked carboxylic acid polymers are those crosslinked carboxylic acid homopolymers or copolymers, which contain unneutralized acid monomers (anionic polymer). Bolich teaches the preference for crosslinked carboxylic acid polymers which have unneutralized acid monomers is due to the fact that they are effective in providing gelling properties to the residue without suppressing the ease of removability of the residue by shampooing the hair. See column 12, line 64 to column 13, line 5 and examples XV-XVI, which utilize Carbopol 934, which is an anionic polymer.

Bolich teaches the liquid carrier can comprise one or more liquid carriers provided that the selected styling agent is sufficiently miscible or dispersible in the selected liquid carrier. Preferred C 1 -C6 alkanols include monohydric alcohols such as ethanol, isopropanol, and mixtures thereof. When the hair styling compositions comprise combinations of water and an organic solvent such as C 1-C6 alkanols, water is preferably included at concentrations of from about 40% to about 90%, more preferably from about 50% to about 90%, even more preferably from about 60% to about 90%; and the alkanols are preferably included at total concentrations of from about 1% to about 15%, more preferably from about 3% to about 15%, even more preferably from about 5% to about 10%, by weight of the composition. See column 8, lines 15-60 and examples.

Bolich teaches the total concentration of the propellant in the aerosol hair styling composition include one or more propellants and the total propellant concentration ranging from about 5% to about 40%, preferably from about 5% to about 25%, more preferably from about 5% to about 15%, by weight of the composition. Suitable propellants taught include hydrocarbons, nitrogen, carbon dioxide, nitrous oxide, atmospheric gas, 1,2-difluoroethane, dimethylether, and mixtures thereof. Suitable hydrocarbon propellants include propane, butane, and isobutane. See column 11, lines 15-25 and examples.

While the reference does not expressly states the prior art composition "imparts waxy effect to the hair", the reference teaches the low molecular weight polyalkylene glycols leave ***fluid film*** on the hair that allows the hair fibers to be separated by forces such as wind, and then re-adhere using styling techniques. See col. 5, lines 28 – 48. The fact that the composition can be applied to dry hair does not mean that the composition cannot provide the claimed "waxy effects" to the hair. In the contrary, the hair having the fluid film from the prior art composition does not appear to be different from the hair displaying "a certain slicking or greasing effect" without hardening effects. The reference teaches the polyalkylene glycol styling agents remain as liquid or semisolid, which obviously renders the wet look and/or feel to the treated hair. See col. 2, lines 36 – 60. Thus it is viewed the prior art hair styling method obviously results in the claimed method of imparting "waxy effects to the hair" as defined by applicant

Bolich teaches optional materials including preservatives, surfactants, conditioning polymers, electrolytes, fatty alcohols, hair dyes, antidandruff actives, odor

masking agents, pH adjusting agents, perfume oils, perfume solubilizing agents, sequestering agents, emollients, lubricants and penetrants such as various lanolin compounds, protein hydrolysates and other protein derivatives, sunscreens, volatile silicone fluids, and isoparaffins. See column 15, lines 50-65 and examples. Bolich does not exemplify the instant concentrations of the propellant and Carbopol. Further, Bolich does exemplify the instant concentrations of hexaglycerin or triglycerin.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to look at the guidance provided by Bolich et al and manipulate the concentrations of the propellant and carbopol in the composition. One would have been motivated to do so with a reasonable expectation of success and similar results since Bolich et al teach the propellant in an amount of 5-40% as taught by Bolich on column 11, lines 20-25 and as claimed in claim 29 of the patent. Further, Bolich et al teach the gelling agent which "helps to provide for improved hair hold performance" in an amount of 0.1-10% on column 11, lines 55- 67.

Secondly, it would have been obvious to substitute the exemplified polyalkylene glycols (PEG) with the hexaglycerin or triglycerin in the claimed amount since Bolich suggests the use of hexaglycerin or triglycerin as the polyalkylene glycols, which are used in an amount of about 1% to about 90%, preferably from about 3% to about 75%, more preferably from about 7.5% to about 50%, even more preferably from about 10% to about 25%, by weight of the composition. Therefore, it is within the skill of an artisan to look at the guidance provided by Bolich and not only manipulate the concentrations

within the general range provided by the prior art but to also utilize the suggested components since Bolich provides the reason and motivation to do so.

Lastly, it is further pointed out that additional styling polymer are taught including anionic polysaccharides in an amount of 0.25-5%. Therefore, it is within the skill of an artisan to further add an anionic polymer to the composition.

Claims 24-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birkel et al (2001/0003584).

Birkel teaches a hair composition comprising (a) a terpolymer present in the composition in an amount of 0.01 to 20% and (b) an anionic polymer present in an amount of from 0.01 to 20%, especially preferably of 0.05 to 10%, and most preferably from 0.1 to 5%. See [0008]. The polymer (B) can be a homopolymer or copolymer with monomer units containing acid groups on a natural or synthetic basis. Suitable monomers containing acid groups include, for example, acrylic acid, methacrylic acid, crotonic acid, maleic acid and/or maleic acid anhydride, maleic acid monoester, especially the mono-C 1- to C7-alkyl ester of the maleic acid and alkdehydocarboxylic acids or ketocarboxylic acids. Suitable polymer compounds with acid groups include cross-linked or uncross-linked vinyl acetate/crotonic acid copolymers; vinyl acetate/crotonic acid/vinyl alkanoate copolymers; VA/crotonates/vinyl neodecanoate copolymer; copolymers of one or more C 1- to C5-alkylacrylates, especially C2- C4-alkylacrylates and acrylic acid or methacrylic acid; etc. See [0017]; [0020]; and examples.

Birkel teaches the composition is packaged in an aqueous, alcoholic or an aqueous-alcoholic medium preferably with at least 10 percent by weight water. Lower alcohols with 1 to 4 carbon atoms, such as ethanol and isopropanol, can be contained. See [0026] and examples. Examples utilize 10% water and above. Organic solvents or a mixture of such solvents can be contained in the composition. Ethylene glycol (polyol), glycerol (polyol), and propylene glycol (polyol) in amount of up to 30 percent by weight are especially preferred water-soluble solvents. See [0027].

Birkel discloses if the hair treatment composition is in the form of an aerosol spray, it contains 15 to 85%, preferably 25 to 75% by weight of a propellant and is filled into a pressurized container. Example of propellants disclosed include lower alkanes, including n-butane, i-butane and propanes, dimethyl ether (DME) or fluorinated hydrocarbons be used as the propellant. See [0030] and examples. Example 4 discloses a composition packaged in an aerosol can, in a ratio 45:55 (composition:DME).

Birkel teaches cosmetic additive for the composition include wetting agents or emulsifiers from the classes of nonionic, anionic, cationic or amphoteric surface-active substances, such as fatty alcohol sulfates, alkylbenzene sulfonates, alkyltrimethyl ammonium salts, alkyl betaines, in an amount of from 0.1 to 15%; moisturizing agents; perfumes, in an amount of from 0.1 to 0.5%; turbidity-inducing agents, such as ethylene glycol distearates, in an amount of about 0.2 to 5.0%; buffer substances, such as sodium citrate or sodium phosphate, in an amount of 0.1 to 1.0%; care materials, such as plant and vegetable extracts, protein and silk hydrolyzates, lanolin derivative

compounds, in an amount of from 0.1 to 5%; silicone derivative compounds, including volatile or non-volatile silicone oils or high molecular weight siloxane polymers, in an amount of from 0.05 to 20%. See [0028] and examples.

Birkel teaches the composition discloses the method for improving film-forming and hair-fixing properties wherein the composition is applied to the hair to fix the style. See [0006] and examples on page 4. Examples 2-6 are directed the aerosol compositions. Example 5-7 teach an aerosol composition comprising a propellant, the anionic polymer, water and ethanol which make up the aqueous-alcohol medium, and other components. Example 3 teaches a hair spray comprising dimethyl ether as the propellant, the anionic polymer, water and ethanol which make up the aqueous-alcohol medium, and other components.

Birkel does not provide an example comprising instant glycols as the co-solvents in the examples.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the instant polyols in the instant concentration in the examples. One would have been motivated to so with a reasonable expectation of success and similar results since Birkel teaches the use of organic co-solvents such as ethylene glycol, glycerol, and propylene glycol in an amount of up to 30% with the aqueous or alcohol-aqueous medium. Therefore, it would have been prima facie obvious to add a co-solvent to the aqueous or alcoholic-aqueous medium to further solubilize other additives in the composition.

Although Birkel does not express the effect of using the hair cosmetic as "a waxy effect" as presently claimed in the instant application, it is viewed that a skilled artisan would have obviously observed such outcome when the product is used as intended since the instant cosmetic method employs the hair product made according to the teachings of the prior art.

Claims 24-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carballada et al (6,585,965).

Carballada et al teach a hair care composition comprising 5-20% polyalkylene glycol styling agents having a molecular weight of 200 to 900 and a film-forming polymer. See abstract and column 2, lines 35-60. The polyalkylene glycol comprises polyethylene glycol or polypropylene glycol, PPG-4 (about 304.36 molecular weight), hexaglycerin, triglycerin, PPG- 6, PEG-5, PEG-6, PEG-8, PEG-12, PEG-14, and PEG-18. Note hexaglycerin has a molecular weight of 462.49 and it has three carbons that are continuous and not interrupted by a heteroatom. Thus, hexaglycerin reads on claimed recitation "wherein the polyol comprises a C3-C30 hydrocarbon chain which is not interrupted by a heteroatom." The reference teaches that the compositions provide desirable wet and/or dry hair restyling performance without unduly sticky or stiff and provide good hair look and feel for extended periods of time without the need to reapply the composition or other styling aids. See col. 2, lines 21 – 36. The reference particularly indicates the low molecular polyethylene glycol liquid or semisolid is delivered to the hair as a fluid film to be left on the hair. See col. 4, lines 4 – 33. The hair having the fluid film from the prior art composition does not appear to be different

from the hair displaying "a certain slicking or greasing effect" without hardening effects. It is viewed the prior art hair styling method obviously results in the claimed method of imparting "waxy effects to the hair" as defined by applicant

Note triglycerol (molecular weight 240.25) also reads on claimed the recitation "wherein the polyol comprises a C3-C30 hydrocarbon chain which is not interrupted by a heteroatom." Note polypropylene glycol and PPG-4 reads on claimed the recitation "wherein the polyol comprises a C3-C30 hydrocarbon chain which is not interrupted by a heteroatom."

The film-forming agent is utilized in an amount of 0.1-3%. Se column 6, lines 40-45. The liquid carrier includes water, organic solvents such as ethanol, n-propanol, isopropanol, n-butanol, and combinations thereof. The liquid carrier comprises at least 50% water, see column 7, lines 1-15. Example IV teaches a composition comprising 38.90% water, 15% ethanol, 1% polyurethane-1 (anionic polymer), 12% PEG-8 ((PEG-8 is also known as Carbowax 400 and has a MW of 400), 0.1% perfume, silicone emulsion, 30% dimethyl ether, among other components. The composition is in an aerosol container.

Carballada does not exemplify the PPG-4, hexaglycerin, or triglycerin in the composition. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to look at the guidance provided by Carballada and substitute the exemplified polyalkylene glycols (PEG) with polypropylene glycol, PPG-4, hexaglycerin or triglycerin in the claimed amount since the reference suggests the use

of glycol, PPG-4, hexaglycerin, or triglycerin as the polyalkylene glycols, which are used in an amount of about 5-20%, wherein the concentration used depends on the desired styling properties.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 24-49 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 23, 24, 26, 28-30, 36-50 of copending Application No. 10/279036 in view of US 5639448.

The instant application is directed to an aerosol composition packaged in an aerosol device, comprising: a) at least one anionic fixing polymer present in an amount ranging from 0.5% to 10% by weight, based on the total weight of the aerosol composition, b) at least one with a molecular weight less than 500, present in an

amount greater than 15% by weight, based on the total weight of the aerosol composition, c) an aqueous-alcoholic or aqueous medium comprising at least 10% by weight of water, based on the total weight of the aerosol composition, and d) at least one propellant gas in an amount greater than or equal to 30% by weight, based on the total weight of the aerosol composition. Instant application is also directed to the method of styling hair.

Independent claim 23 of '036 is directed to a composition packaged in an aerosol device comprising, in a cosmetically acceptable medium, at least one non-associative fixing polyurethane and at least on anionic or nonionic associative polyurethane, and a propellant.

Dependent claim 35 is directed to the anionic or nonionic polymer in the amount of 0.5-10%. Dependent claim 40 is directed to dimethyl ether as the propellant and claim 41 is directed to the propellant in the amount of 2-90%. Dependent claim 43 is directed to the medium comprising water and a solvent. Dependent claim 44 is directed to a solvent selected from at least lower alcohols (C 1-C4), alkylene polyol, a polyol ether, and mixtures. Dependent claim 46 is directed to the instantly claimed additives and dependent claims are directed to a cosmetic hair treatment.

Copending application does not claim the amount of the polyol solvent in the composition.

US '448 teaches a method of thermo-styling hair. US '448 teaches the cosmetic vehicle is predominately water with a mixture of organic solvents. Suitable solvents

known in the art include alcohols, polyols such as glycerol; glycols including propylene glycol in an amount of 1-75%. See column 14, lines 5-10. US '448 teaches a propellant is used in an amount of 3-30%. See column 13, line 50. US '448 teaches water more than 10%.

The difference between the instant application and copending application is that the instant application requires at least 15% polyols. However, copending application recites polyols and polyol ethers as the organic solvent in a Markush group. Secondly, the copending application does not claim the concentration of polyol solvent. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to look to US '448 and utilize polyols in the instant concentration. One would have been motivated to do so since US '448 teaches the instant polyols are *conventionally* utilized as solvents and carriers in the amount of 1-75% and preferably *5-50%* with water. Further, it should be noted that the manipulation of concentrations of conventional solvents encompassed by the prior art are considered to be prima facie obvious unless there is evidence indicating the amount is critical. See In re Aller, 220 F.2d 454, 456, 105 USPQ 233,235 (CCPA 1955). Therefore, the instant application and copending application are obvious modifications of each other.

Although the copending application does not express the effect of using the hair cosmetic as "a waxy effect" as presently claimed in the instant application, it is viewed that a skilled artisan would have obviously observed such outcome when the product is used as intended since the instant cosmetic method employs the hair product made according to the teachings of the copending application in view of the '448 patent.

This is a provisional obviousness-type double patenting rejection.

Claims 24-49 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 20-36 of copending Application No. 10/479170 in view of US 5639448.

The instant application is directed to an aerosol composition packaged in an aerosol device, comprising: a) at least one anionic fixing polymer present in an amount ranging from 0.5% to 10% by weight, based on the total weight of the aerosol composition, b) at least one with a molecular weight less than 500, present in an amount greater than 15% by weight, based on the total weight of the aerosol composition, c) an aqueous-alcoholic or aqueous medium comprising at least 10% by weight of water, based on the total weight of the aerosol composition, and d) at least one propellant gas in an amount greater than or equal to 30% by weight, based on the total weight of the aerosol composition.

' 170 is directed to a cosmetic composition packaged in an aerosol device comprising a propellant, a liquid phase comprising a cosmetic medium, solid particles, a fixing polymer and/or a thickening polymer and aluminum. Dependent claim 26 is directed to an anionic or nonionic polymer. Dependent claim 27 is directed to an anionic polymer wherein the monomers are sulfuric acids. Dependent claim 29 is directed to a thickening polymer that is a copolymer of acrylic acid and methacrylic acid (anionic polymer). Dependent claim 32 is directed to the polymer in the amount of 0.01-8%. Dependent claim 33 is directed to DME. And claim 35 is directed to the propellant in the

amount of 2-90%. Dependent claim 36 is directed to the same additives as recited in instant claims. Dependent claims are directed to a method of styling the hair.

Copending application does not claim a polyol solvent in the composition.

US '448 teaches a method of thermo-styling hair. US '448 teaches the cosmetic vehicle is predominately water with a mixture of organic solvents. Suitable solvents known in the art include alcohols such as ethanol and isopropanol, polyols such as glycerol; glycols including propylene glycol in an amount of 1-75% and 5-50%. See column 14, lines 5-10. US '448 teaches a the ethanol in the amount of 0-8% and water more than 10%.

The difference between the instant application and copending application is that the instant application requires at least 15% polyols and at least 10% water. However, it would have been obvious for one of ordinary skill in the art at the time the invention was made to look to US '448. US '448 teaches the instant polyols are conventionally utilized as solvents in the amount of 1-75% and 5-50% and are in combination with water as the predominate solvent to form the liquid carrier in hair compositions. Therefore, it would have been obvious to utilize a polyol in the instant amount with water to form the liquid phase of' 170 since the prior art teaches these are conventional carriers. Further, it should be noted that the manipulation of concentrations of additives such as solvents encompassed by the prior art are considered to be prima facie obvious unless there is evidence indicating the amount is critical. See *In re Aller,* 220 F.2d 454, 456, 105

USPQ 233,235 (CCPA 1955). Therefore, the instant application and copending application are obvious modifications of each other.

Although the copending application does not express the effect of using the hair cosmetic as "a waxy effect" as presently claimed in the instant application, it is viewed that a skilled artisan would have obviously observed such outcome when the product is used as intended since the instant cosmetic method employs the hair product made according to the teachings of the copending application in view of the '448 patent.

Response to Arguments

Applicant's arguments with respect to claims 24-49 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Friday, from 9:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/
Primary Examiner, Art Unit 1611